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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MCIS ZURICH INSURANCE BEHAD a/s/o MetTube  
Sdn. Bhd. and Seegrove International Shippers,

**08 Civ. 4054 (LTS)**

Plaintiff,

v.

HANJIN SHIPPING CO., LTD.

Defendant and Third-Party Plaintiff

v.

UNION PACIFIC RAILROAD COMPANY

Third-Party Defendant.

**ANSWER AND AFFIRMATIVE DEFENSES OF THIRD-PARTY DEFENDANT  
UNION PACIFIC RAILROAD COMPANY  
TO DEFENDANT AND THIRD-PARTY PLAINTIFF'S COMPLAINT**

Third-Party Defendant, Union Pacific Railroad Company ("UP") by its attorneys, Barry N. Guterman & Associates, P.C., alleges as follows for its Answer and Affirmative Defenses to Plaintiff MCIS Zurich Insurance Behad a/s/o MetTube Sdn. Bhd. and Seegrove International Shippers ("Plaintiff") Complaint:

1. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 1 of the Complaint and therefore denies the same and leaves plaintiff to its proof.

2. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 2 of the Complaint and therefore denies same and leaves plaintiff to its proof.
3. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 3 of the Complaint and therefore denies same and leaves plaintiff to its proof.
4. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 4 of the Complaint and therefore denies same and leaves plaintiff to its proof.
5. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 5 of the Complaint and therefore denies same and leaves plaintiff to its proof.
6. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 6 of the Complaint and therefore denies same and leaves plaintiff to its proof.
7. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 7 of the Complaint and therefore denies same and leaves plaintiff to its proof.
8. UP denies the allegations contained in paragraph 8 of the Complaint.
9. UP repeats and realleges its responses to paragraphs 1-8 of the Complaint as its response to paragraph 9.
10. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 10 of the Complaint and therefore denies same and leaves plaintiff to its proof.

11. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 11 of the Complaint and therefore denies same and leaves plaintiff to its proof.
12. UP denies the allegations contained in paragraph 12 of the Complaint.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

13. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

14. In the event that plaintiff had no title or interest in the shipment that is the subject matter of this action, then plaintiff is not the real party in interest herein and is not entitled to maintain this suit.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

15. The contract of carriage does not contemplate responsibility for special or consequential damages. To the extent that plaintiff seeks special and/or consequential damages, UP is not responsible for such amounts.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

16. If the shipment referred to in the Complaint suffered any loss, damage and/or delay, which is herein expressly denied, such loss, damage and/or delay was caused by acts or omissions by a third party or a party over whom UP has no control.

**AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE**

17. UP is not guilty of any negligence which was a proximate cause of any alleged damages of which Plaintiff complains.

**AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE**

18. Any damages alleged to have occurred was solely due to the negligence of plaintiff and/or Third-Party Plaintiff or others acting on their behalf.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE**

19. The shipment was received for transportation by UP and was accepted in accordance with, and subject to all the terms and conditions of the bill of lading contract and all applicable transportation contracts, classifications and tariffs, rules and regulations set forth therein, and the rules, regulations and practices of UP, which together form the contract of carriage respecting the transportation of said shipment. In addition, UP duly performed all the terms and conditions of said contract of carriage on its part to be performed.

**AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE**

20. UP did not load, count or secure the subject shipment, and they cannot be held liable for any damage to the shipment caused by improper loading and/or securement based upon the provisions of applicable law and the Master Intermodal Transportation Agreement.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

21. To the extent that the contract of carriage including the tariffs and the applicable law thereto, provided for any limitation of liability for any loss or damage to the shipment in question, neither plaintiff nor Third-Party Plaintiff can recover in excess of this amount.

**AS AND FOR A TENTH  
AFFIRMATIVE DEFENSE**

22. To the extent that a proper written notice of claim was not timely filed by plaintiff, the within action is time barred.

**AS AND FOR AN ELEVENTH  
AFFIRMATIVE DEFENSE**

23. To the extent that plaintiff failed to bring a timely suit, the within action is time barred.

**AND AS FOR A TWELFTH  
AFFIRMATIVE DEFENSE**

24. This court has no subject matter jurisdiction against UP and venue is improper.

**AND AS FOR A THIRTEENTH  
AFFIRMATIVE DEFENSE**

25. There is no privity of contract between plaintiff and UP.

**AND AS FOR A FOURTEENTH  
AFFIRMATIVE DEFENSE**

26. Pursuant to the Exempt Transportation Agreement between Hanjin and UP, claims between Hanjin and UP are subject to mandatory arbitration in New York.

**AS AND FOR A FIFTEENTH  
AFFIRMATIVE DEFENSE**

27. Plaintiff failed to mitigate its damages.

WHEREFORE, Defendant Union Pacific Railroad Company, demands judgment:

(1) dismissing the Complaint with prejudice, together with costs, disbursements and reasonable counsel fees; and (2) for such other or different relief as to this Court may deem just and proper.

Dated: New York, New York  
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By: /s/ Barry N. Guterman  
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